

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TIMOTHY WOODS,)
Plaintiff,)
)
v.) Case No. **2:07-CV-852-WHA-WC**
)
DAVID A. CONOLY, and)
KENNETH ARMSTRONG,)
Defendants.)

SUGGESTION OF DEATH

COMES NOW the undersigned, without entering a notice of appearance, and respectfully notices the Court as follows:

I. FACTS

1. The complaint in this matter was filed on September 21, 2007. See *Complaint* (Doc. 1-2), attached hereto as Exhibit A.

2. Service of process on Officer Armstrong was attempted by certified mail, and the return receipt was signed by Montgomery Police Department Cadet Bailey on September 27, 2007. See *Return Receipt* (Doc. 7), attached hereto as Exhibit B.

3. Montgomery Police Officer Kenneth M. Armstrong died in the line of duty on August 17, 2007, before this action was filed. See *Affidavit of Kevin J. Murphy*, attached hereto as Exhibit C. There is no other Montgomery Police Officer with the surname Armstrong.

4. Because this information might not otherwise have been made available to the Court and is clearly relevant to its consideration of this case, the undersigned respectfully submits the fact that Officer Kenneth M. Armstrong is deceased, and died before this case was filed.

II. MEMORANDUM OF POINTS AND AUTHORITIES

5. **Officer Armstrong Does Not Have Capacity to be Sued.** A party must have a legal existence as a prerequisite to having the capacity to sue or be sued. Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Roby v. The Corp. of Lloyd's, 796 F.Supp. 103 (S.D.N.Y.1992); Brown v. Fifth Judicial District Drug Task Force, 255 F.3d 475 (8th Cir.2001); and Youell v. Grimes, 203 F.R.D. 503, 509 (D.Kan.2001).

6. Officer Kenneth Armstrong died before the complaint was filed. A person who dies prior to the filing of a lawsuit is not a legal entity. Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Mizukami v. Buras, 419 F.2d 1319 (5th Cir.1969) (defendant's death extinguishes claim); Moul v. Pace, 261 F.Supp. 616 (D.Md.1966) (wrongful death suit brought after defendant died dismissed); Chorney v. Callahan, 135 F.Supp. 35 (D.Mass.1955) (purported action a nullity because a dead man cannot be named defendant in an action); and Pasos v. Eastern S.S. Co., 9 F.R.D. 279 (D.Del.1949) (person who dies prior to filling suit is not a legal entity).

7. Because a deceased individual is not a proper party, the action against Officer Armstrong is a nullity. Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Banakus, 290 F.Supp. 259.

8. **Rule 25(a)(1) Substitution Does Not Apply Here.** Further, Rule 25(a)(1) of the Federal Rules of Civil Procedure, which allows substitution for a deceased party does not apply here. Mizukami v. Buras, 419 F.2d 1319, 1320 (5th Cir. 1969)¹.

9. Rule 25(a)(1) "clearly contemplates that the party to be substituted has

¹ Decisions of the U.S. Court of Appeals for the 5th Circuit decided prior to September 30, 1981 are binding precedent in the 11th Circuit. Bonner v. Pritchard, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc).

died subsequent to the commencement of the lawsuit.” Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Mizukami, 419 F.2d 1319; Banakus, 290 F.Supp. at 260; Chorney, 135 F.Supp. 35 (complaint dismissed as a nullity because substitution of administrator ineffectual when defendant died before suit was filed); Moore's Federal Practice § 25.10, at 25-9 (2000); 7C Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d § 1951, at 522 (1986); see also Hanberry v. United States, 204 Ct.Cl. 811, 1974 WL 5597 (1974). In this case, Officer Armstrong died prior to the filing of the action and thus substitution of any party in his stead would be inappropriate.

WHEREFORE, as an officer of the court, the undersigned hereby notices the Court of the foregoing, and suggests, on the record, that the death of Montgomery Police Officer Kenneth M. Armstrong occurred on August 17, 2007, before this action was filed.

Respectfully submitted this 26th day of November, 2007,

/s/ Allison H. Highley
Allison H. Highley (HIG024)
Associate City Attorney

OF COUNSEL:
City of Montgomery
Legal Department
Post Office Box 1111
Montgomery, Alabama 36101
(334) 241-2050 Telephone

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2007, I placed a copy of the foregoing in the United States Mail, first-class postage prepaid and addressed to: Timothy Woods, Montgomery City Jail, Post Office Box 159, Montgomery, Alabama 36101

/s/ Allison H. Highley
Of Counsel

Exhibit A

TIMOTHY WOODS
SS# 262-73-0392

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

REG. NUMBER # 09369002

MONTGOMERY, CITY JAIL

P.O. BOX 159 MONTGOMERY, AL 36101

Full name and prison name of

Plaintiff(s)

v.

DAVID A. CONOLY PROBATION

OFFICER DOWN TOWN PROBATION

OFFICE, MONTGOMERY,

ALABAMA 36101 OFFICER

ARMSTRONG MONTGOMERY,

POLICE DEPARTMENT

Name of person(s) who violated your

constitutional rights. (List the names

of all the person.)

2007 SEP 21 A 9:58

DEBRA P. HACKETT, CLK

U.S. DISTRICT COURT

MIDDLE DISTRICT ALA

CIVIL ACTION NO.

2:07cv852-WHA

(To be supplied by Clerk of U.S. District
Court)

I. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES No

B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES NO

C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff(s) TIMOTHY WOODS REG. NUMBER # 09369002

MONTGOMERY, CITY, JAIL! P.O. BOX 159 MONTGOMERY, ALABAMA 36101

Defendant(s) DAVID A. CONOLY, PROBATION OFFICER

And OFFICER ARMSTRONG, RACIST, KU KLUX KLANSMAN!

2. Court (if federal court, name the district; if state court, name the county)

MONTGOMERY, FEDERAL COURT, UNITED STATES

FEDERAL COURT, MONTGOMERY, ALABAMA 36101

I NEED
Civil Rights F.B.I.

AGENTS AND U.S. ATTORNEYS
TO COME SEE TODAY AND
GET ME OUT OF THIS PLACE!

TODAY! I NEED

S.O.S HELP TODAY!

Timothy Woods
SS# 262-73-0393
REG. NUMBER # 09369002

3. Docket number N/A
 4. Name of judge to whom case was assigned N/A

5. Disposition (for example: was the case dismissed? Was it appealed? Is it still pending?) N/A
 6. Approximate date of filing lawsuit N/A
 7. Approximate date of disposition N/A

II. PLACE OF PRESENT CONFINEMENT MONTGOMERY, CITY JAIL
P.O. BOX 159 MONTGOMERY, ALABAMA 36101
 PLACE OR INSTITUTION WHERE INCIDENT OCCURRED AT HOME, IN
GEORGIANA, ALABAMA 36033 RTE 3 BOX 23

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

	NAME	ADDRESS
1.	<u>DAVID A. CONOLY, MONTGOMERY, ALABAMA</u>	<u>PROBATION OFFICER DOWN TOWN MONTGOMERY, ALABAMA 36104</u>
2.	<u>OFFICER ARMSTRONG, MONTGOMERY, POLICE DEPARTMENT, MONTGOMERY, AL</u>	
3.		
4.		
5.		
6.		

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED ON THE 5/18/2007
DAVID A. CONOLY PROBATION OFFICER! OFFICER ARMSTRONG

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

ALSO; SUPPORTING FACTS!

GROUND ONE: DAVID A. CONOLY U.S. FEDERAL PROBATION OFFICER
DOWN TOWN, FEDERAL PROBATION OFFICE, MONTGOMERY, ALABAMA 360

DAVID A. CONOLY, PROBATION OFFICER, SAID THAT I WAS NOT TAKEN; MY MENTAL, HEALTH; MEDICATIONS, BECAUSE I WAS TAKEN MY, MENTAL, HEALTH; MEDICATIONS, WHAT DOCTOR, PSYCHOLOGYS, MR. POWELL; AT THE GREENVILLE, ALABAMA; MENTAL HEALTH; CENTER! MEDICATIONS; THAT, DOCTOR, PSYCHOLOGYS, MR. POWELL, GIVE ME ONCES, A MONTH! AT THE MENTAL HEALTH; CENTER! IN; GREENVILLE, ALABAMA! DOCTOR POWELL, SAID THAT I CAN GET MY MENTAL, HEALTH, FUNDS CHECKS! BACK TODAY! And I WAS GETTING MY MENTAL, HEALTH, CHECKS; ONCE A MONTH; FOR \$4,900.00 DOLLARS!

EVERY MONTH, THROUGH THE YEAR, I GET MY MENTAL, HEALTH; FUNDS CHECK; ONCE EVERY MONTH; THROUGH THE YEAR. I NEED TO GET MY MENTAL, HEALTH, FUNDS CHECKS! I NEED S.O.S HELP! TODAY! I NEED FOR THE U.S. ATTORNEYS HERE IN MONTGOMERY, ALABAMA; TO GET ME OUT OF THIS PLACE! TODAY! AND WRITE ME BACK TODAY! I NEED YOU TO HAVE THE FEDS TO COME GET ME OUT OF THIS PLACE! TODAY! BECAUSE DAVID A. CONOLY, SAID THAT I CAN GO HOME, TODAY! OR TO THE HALFWAY, HOUSE! TODAY! I WAS AT MY MOTHER HOUSE, IN GEORGIANA, ALABAMA AND DAVID A. CONOLY, TOLD ME; HERE IS A CARD AND HE GIVE ME HIS CARD, TO CALL HIM; WHEN I NEED TO TALK TO HIM! FEDERAL COURT! I NEED FOR THE FEDERAL AGENTS OF CIVIL RIGHTS HERE; IN MONTGOMERY, ALABAMA; TO COME AND GET ME OUT OF THIS PLACE! TODAY! BECAUSE DAVID A. CONOLY, IS A RACIST, KU KLUX KLANSMAN! BECAUSE I SUPPOSE TO BE AT MY MOTHER HOUSE; IN GEORGIANA, ALABAMA, I NEED FOR THE U.S. ATTORNEY; HERE IN MONTGOMERY, ALABAMA; TO COME GET ME OUT OF THIS MONTGOMERY, CITY; JAIL! TODAY! BECAUSE I AM READY TO GO HOME, TODAY! I NEED TO GET MY CLOTHES AND PROPERTY'S FROM, MY MOTHER HOUSE AND UNCLE HOUSE; IN GEORGIANA, ALABAMA TODAY! I NEED S.O.S HELP! TODAY! I NEED TO GO HOME TODAY! I NEED THE CIVIL RIGHTS;

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

U.S. ATTORNEY'S; HERE IN MONTGOMERY, ALABAMA, TO COME SEE ME AND GET ME OUT OF THIS MONTGOMERY, ALABAMA, CITY JAIL! TODAY! I NEED TO GO HOME TODAY COME GET ME OUT OF THIS PLACE! TODAY! I NEED TO GET OUT OF THIS PLACE, TODAY. U.S. ATTORNEY, I NEED S.O.S HELP! TODAY

GROUND TWO: OFFICER ARMSTRONG, CAME TO MY MOTHER'S HOUSE, IN GEORGIA, ALABAMA, AND TAKEN MY CAR, AND DRIVE MY CAR, TO THE MONTGOMERY, ALABAMA POLICE STATION; AND TO THE MONTGOMERY POLICE STATION.

SUPPORTING FACTS: OFFICER ARMSTRONG, HAD NO PROBABLE CAUSE, TO TAKE MY CAR AND DRIVE IT TO THE MONTGOMERY POLICE STATION, HERE IN MONTGOMERY, ALABAMA; OFFICER ARMSTRONG, HAD NO JURISDICTION TO COME TO GEORGIA, ALABAMA, ON THE 5/6/2007 AND COME FROM MONTGOMERY, ALABAMA, TO GEORGIA, ALABAMA WITH DAVID A. CONOLY. AND OFFICER ARMSTRONG, TAKEN MY CAR AND DRIVE IT TO THE MONTGOMERY, ALABAMA, POLICE STATION HERE IN MONTGOMERY, ALABAMA.

GROUND THREE:

THEY ARE KU KLUX KLANSMAN, DAVID A. CONOLY, OFFICER ARMSTRONG

SUPPORTING FACTS: DAVID A. CONOLY AND OFFICER ARMSTRONG! HAVE NO PROBABLE CAUSE, TO HAVE ME IN THIS PLACE! THE MONTGOMERY, CITY, JAIL! OR, FOR, THESE, KU KLUX KLANSMANS, FOR TAKEN MY CAR! IN THIS CIVIL RIGHTS LAW SUIT, I AM

ASKING, FOR \$100, MILLION DOLLARS, TODAY! IN CASH; TODAY! AND A BUS TICKET TO GO HOME; TODAY! I NEED S.O.S HELP! TODAY! S.O.S. HELP! TODAY! S.O.S. HELP! TODAY! S.O.S. HELP! TODAY! I NEED S.O.S. HELP! TODAY! S.O.S. HELP! TODAY!

AFFIDAVIT

SUPPORTING FACTS;

SWORN AFFIDAVIT OF TRUTH

THE MONTGOMERY POLICE STATION OFFICER

ARMSTRONG; HAD NO; PROBABLE CAUSE; TO TAKE MY CAR FROM, MY MOTHER HOUSE; IN GEORGIANA, ALABAMA; AND DRIVE MY CAR TO THE MONTGOMERY POLICE STATION AND OFFICER ARMSTRONG, HAD NO; PROBABLE, CAUSE OR THE JURSDICITION, TO COME TO GEORGIANA, ALABAMA WITH DAVID A. CONOLY, PROBATION OFFICER AND OFFICER ARMSTRONG TAKE MY CAR FROM MY MOTHER HOUSE! AND DRIVE MY CAR TO THE MONTGOMERY, ALABAMA; POLICE STATION HERE; IN MONTGOMERY! UNITED STATES FEDERAL COURT, ALABAMA POLICE STATION! BECAUSE OFFICER ARMSTRONG, HAD NO; JURSDICITION OR PROBABLE CAUSE TO COME TO GEORGIANA, ALABAMA, FROM MONTGOMERY, ALABAMA; WITH RACIST DAVID A. CONOLY AND THEY ARE KU KLUX KLANSMEN! OFFICER ARMSTRONG, IS A MONTGOMERY, ALABAMA CITY POLICE OFFICER! OFFICER ARMSTRONG; HAD NO; PROBABLE; CAUSE, OR THE JURSDICITION; OR; NO; PROBABLE; CAUSE, TO COME FROM MONTGOMERY, ALABAMA; TO GEORGIANA, ALABAMA; TO TAKE MY CAR TO THE MONTGOMERY, POLICE; STATION! AND TO THE POLICE POUND! OFFICER ARMSTRONG; KEPT! MY CAR! IN THIS CIVIL RIGHTS LAW SUIT

I AM ASKING FOR \$100, MILLION DOLLARS, IN CASH! TODAY!
And A BUS TICKET to go home; TODAY! I NEED THE CIVIL RIGHTS F.B.I. AGENTS And CIVIL RIGHTS U.S. ATTORNEY, TO COME AND GET ME OUT OF THIS PLACE! TODAY! BEFORE I GET KILLED; BY DAVID A. CONOLY, AND OFFICER ARMSTRONG! FEDERAL COURT, I NEED S.O.S HELP! TODAY! HAVE; THE F.B.I. AGENTS! And THE U.S. ATTORNEYS, TO COME GET ME OUT OF THIS PLACE! TODAY! BECAUSE I SUPPOSE TO BE AT HOME! WITH MY MOTHER!

AFFIDAVIT

SWORN AFFIDAVIT OF TRUTH

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

get Civil Rights U.S. ATTORNEY'S, TODAY! for me And
Civil Rights, F.B.I AGENTS; TODAY! for me And HAVE
them; to Come SEE me TODAY! And GET me OUT OF
this PLACE; TODAY! I NEED S.O.S HELP! TODAY!
BECAUSE I DO NOT SUPPOSE TO BE in this MONTGOMERY
CITY JAIL! I NEED to go HOME TODAY! I NEED THE

Civil Rights F.B.I AGENTS!

And the U.S. ATTORNEY'S to
COME GET me OUT, THIS PLACE! TODAY!

Timothy Woods

Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true and correct.

I Timothy Executed on 9/21/2007
(Date)

WOODS, SS#262-73-0393

I did no wrong

to no one in MONTGOMERY,

ALABAMA OR NOWHERE!

RACIST DAVID A. CONOLY,

SAID I WAS going to A halfway

HOUSE; ABOUT A MONTH; AGO!

And I DO NOT SUPPOSE TO BE

IN this PLACE! I HAVE BEEN

in this PLACE; FOR ABOUT; FIVE,

MONTHS! I only TAKE MENTAL, HEALTH;

MEDICATIONS; BECAUSE my; GIRL, FRIEND; DIE,
IN; A CAR, CASH! SOMEWHILE AGO! I NEED

S.O.S HELP! TODAY! I NEED to go HOME;

TODAY! BECAUSE I FEAR for my WELL BEINGS!

Civil Rights F.B.I AGENTS, And Civil Rights;

U.S. ATTORNEY; COME SEE me TODAY! and get me OUT OF this PLACE! TODAY! HEL

S.O.S

! HEL

Exhibit B

Woods

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <i>Cadet Dennis Bailey</i></p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery <i>9-27-07</i></p>	
<p>1. </p> <p>Officer Armstrong Montgomery Police Department P. O. Box 159 Montgomery, AL 36101</p>		<p>ess different from item 1? <input type="checkbox"/> Yes Delivery address below: <input type="checkbox"/> No</p>	
<p>2. Article Number <i>2007CU852-WTA (due 11/26/07) (Cmp/Leader/R+R)</i></p>		<p>D. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>(Transfer from service 1a)</p>		<p>7007 1490 0000 0026 5070</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	
<p>102595-02-M-1540</p>			

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TIMOTHY WOODS, No. 09369002,)
Plaintiff,)
v.) Case No. 2:07-CV-852-WHA
DAVID A. CONOLY, and)
KENNETH M. ARMSTRONG,)
Defendants.)

AFFIDAVIT OF KEVIN J. MURPHY

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

Before me, a Notary Public in and for said State and County, personally appeared **Kevin J. Murphy** and, after first being duly sworn by me, did depose and state:

1. I am Lt. Col. Kevin J. Murphy and I am over nineteen years of age, have first-hand knowledge of the facts contained herein and am competent to testify thereto.

2. I am currently employed as Deputy Chief of Police for the Montgomery Police Department. As Deputy Chief of Police, I receive information on the facts and circumstances surrounding any incident where an MPD officer dies in the line of duty.

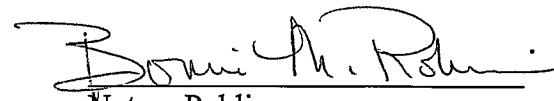
3. Montgomery Police Officer Kenneth M. Armstrong died in the line of duty on August 17, 2007.

4. I have read this affidavit consisting of two pages and affirm that it is true to the best of my knowledge, information and belief.

Further Affiant saith not.


Lt. Col. Kevin J. Murphy
Deputy Chief of Police
Montgomery Police Department

SWORN to and SUBSCRIBED before me this the 21st day of November 2007.



Notary Public

My commission expires: 2-17-2010

NOTARY PUBLIC STATE OF ALABAMA AT Large
MY COMMISSION EXPIRES: Feb 17, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS